



Nzyimi & another v Ngaruiya & 2 others; Registered Trustees of Faith Mission Church & 13 others (Interested Parties); Mosica Properties Ltd (Intended Interested Party) (Environment & Land Case E001 of 2021) [2022] KEELC 13519 (KLR) (4 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13519 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E001 OF 2021
CA OCHIENG, J
OCTOBER 4, 2022

BETWEEN

RICHARD MAKAU NZYIMI 1ST PLAINTIFF
MUENI KIKETI (SUNG AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE KIKETI NZYIMI ALIAS KIKETI) 2ND PLAINTIFF

AND

WILFRED NG'ANG'A NGARUIYA 1ST DEFENDANT
THE CHIEF LAND REGISTRAR 2ND DEFENDANT
PAUL MASILA KIMEU THE ADMINISTRATOR OF SYOKIMAU FARM LTD 3RD DEFENDANT

AND

REGISTERED TRUSTEES OF FAITH MISSION CHURCH INTERESTED PARTY

IBRAHIM SAKWA MZEE INTERESTED PARTY
HARUN NGUGI NDUNG'U INTERESTED PARTY
ISAAC MUSILA MUTUA INTERESTED PARTY
FIBIAN CHIMAKATI INTERESTED PARTY
JOSEPH MUTINDA MUTUKU INTERESTED PARTY
MATHEW MULI MUTISO INTERESTED PARTY
MAGDALINE WANJIRU KINYANJUI INTERESTED PARTY
BEATRICE ANYANGO MACHIO INTERESTED PARTY
JOEL MULI INTERESTED PARTY



STANLUS NDETI MWANIA INTERESTED PARTY
GIDEON OMARE INTERESTED PARTY
FRANCIS MUOKI INTERESTED PARTY
AMBROSE WAMBUA MUTUA INTERESTED PARTY

AND

MOSICA PROPERTIES LTD INTENDED INTERESTED PARTY

RULING

1. What is before court for determination is the intended interested party's notice of motion application dated the April 5, 2022 brought pursuant to sections 1A, 2A, 2B and 3A of the *Civil Procedure Act* and order 1 rules of the *Civil Procedure Rules*. The applicant seeks the following orders:
 - a) That this honourable court herein be pleased to join Mosica Properties as an interested party in this matter.
 - b) That the cost of the application herein be provided for.
2. The application is premised on the grounds on the face of it and the supporting affidavit of Joseph Waweru Chege who is its director where he deposes that he became aware of the existence of this suit while attending to a different matter being Machakos ELC No 226 of 2016 in which they are adverse parties and the suit land therein is LR No 12715/155. He explains that their company did purchase the suit land herein being LR No 12715/155 from an individual named Mwangangi Mutula Mutua (deceased) who had title to the said land passed to him by Syokimau Farm Limited represented by the interested party on record. He insists that the applicant has interest in the suit land herein and therefore ought to participate in this matter to safeguard its interests. He reiterates that from the annexure of the plaint, there exists another active matter in this court where the dispute therein revolves around the suit land and it would therefore be prudent for the court to allow the instant application as they have demonstrated that they have a stake in this suit and ought to be granted an opportunity to state their case. Further, that the orders sought in the plaint are likely to occasion harm and/or prejudice to them as the same orders if granted are likely to deprive them of the right to ownership of the suit land.
3. Most of the respondents did not oppose this application except for the 1st defendant who filed a replying affidavit where he contended that the application was unmerited and a waste of judicial time. He confirms the existence of ELC No 226 of 2016 whereby the suit land is the same as the one herein. Further, that since the intended interested party is the 8th defendant in the said suit, its claim over the suit land can be canvassed therein. He claims the intended interested party is working in cahoots with third parties to delay this matter. Further, that its alleged claim over the suit land should be against the vendor Mutula Mwangangi. He reiterates that the orders sought in this suit are not directed at the intended interested party.

The application was canvassed by way of written submissions.

Analysis and Determination

4. Upon consideration of the instant notice of motion application including the respective affidavits as well as the annexures thereon, the only issue for determination is whether the intended interested party should be joined in this suit.



5. [*Black's Law Dictionary*](#) 10th Edition, page 1298 defines an interested party as follows:

“A party who has a recognizable stake (and therefore standing) in a matter.”

6. In respect to joinder of a party to a suit, order 1 rule 10 of the [*Civil Procedure Rules*](#) provides *inter alia*:

“(1) Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit. (2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

7. In respect to joinder of a party, the Court of Appeal in the case of [*Civicon Limited v Kivuwatt Limited and 2 others*](#) [2015] eKLR held that:

“The court has a separate, independent duty from the parties themselves to ensure that all necessary and proper parties, and no others, are before it so that it may effectually and completely determine and adjudicate upon all matters in dispute. For this reason, at any stage of the proceedings, the court may on such terms as it thinks just and either on its own motion or on application, order for the joinder of a party where the party is a person who ought to have been joined as a party or; (a) whose presence before the court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon. (b) the party is any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed which in the court's opinion it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.”

8. On perusal of the plaint, defences, instant application, including the annexures herein, I note the intended interested party claims to have purchased the suit land from one Mwangangi Mutula Mutua (deceased) who had title to the said land passed to him by Syokimau Farm Limited. The intended interested party contends that it has an interest in the suit land herein and therefore ought to participate in this matter to safeguard its interests. It has emerged that there is a related suit being Machakos ELC No 226 of 2016 before this court wherein the fulcrum of the dispute revolves around the ownership of the suit land. From the certificate of title annexed to the instant application, I note the suit land was transferred to Mwangangi Mutula Mutua on June 8, 1993.

9. Based on the facts as presented while relying on the legal provisions I have cited as well as associating myself with the quoted decision, I find that the applicant meets the criteria set of an interested party and its involvement in this suit will be necessary to enable the court effectually as well as completely adjudicate upon this matter. Further that the ultimate orders in this suit will not be enforced without its



presence in the matter. I further find that no prejudice will be suffered by the plaintiffs and defendants if the applicant is allowed to be joined in this suit.

10. In the circumstances, I find the notice of motion application dated the April 5, 2021 merited and will allow it. I direct that the plaintiffs do serve their pleadings including documents upon the interested party within seven (7) days from the date hereof after which the said interested party shall file and serve its defence within twenty-one (21) days.

The costs of this application will be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 4TH DAY OF OCTOBER, 2022

CHRISTINE OCHIENG

JUDGE

